IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No 713 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

SHAH VIJAYKUMAR CHINULAL

Versus

STATE OF GUJARAT

Appearance:

1. Special Criminal Application No. 713 of 2002

MS DAMINI J RAVAL for Petitioner No. 1

MR KR RAVAL for Petitioner No. 1

MISS NANDINI JOSHI Ld. APP for Respondent No. 1

..... for Respondent No. 2-3

CORAM : MR.JUSTICE C.K.BUCH

Date of decision: 02/05/2003

ORAL JUDGEMENT

The petitioner has challenged the legality and

validity of the order of externment passed by the Sub Divisional Magistrate, Gandhinagar vide order dated 27.3.2002 in Externment Case No. 2 of 2002 in exercise of powers under sec. 56(B) of the Bombay Police Act. 1951.

The petitioner was served with the notice to show cause under sec. 59 of the said Act and the same was replied and after enquiry, the order under challenged came to be passed. The petitioner has challenged the order of externment before the State Government as provided under sec. 60 of the said Act, but the respondent no. 2- Deputy Secretary, Home Department, Gandhinagar rejected the said appeal of the petitioner-externee. For short, the petitioner has challenged both these orders invoking the jurisdiction of this Court under Article 226 and 227 of the Constitution of India.

Both these orders are challenged on various grounds mentioned in the memo of petition and the ld. counsel has taken me through the stand taken by the petitioner before the enquiry authority and the appellate authority and has submitted that both these orders suffers from more than one infirmity and, therefore, the same should be quashed and set aside. According to Mr. Raval, the externee had requested the authority to refer the principle laid down by this court in the case reported in 1985(1) GLR p. 194, but this decision has been ignored by both these authorities.

Mr. Raval concentrated his arguments mainly on one ground and has pointed out that the externing authority has passed the order on extraneous consideration and has referred certain facts which were not brought to the notice of the petitioner when he was served with notice to show cause under sec. 59 of the said Act. I have carefully considered the notice served to the externee under sec. 59 of the said Act by the authority and, there is no reference of criminal wrong committed qua any individual nor it is mentioned that the authority is supplied with the material based on the statements of two secret witnesses allegedly recorded on 22.9.2001. Notice to show cause is dated 1.1.2002. The last offence registered against the present petitioner punishable under the Bombay Prohibition Act is of 21.6.2001. The delay in issuing the notice to show cause for externment under sec. 5991) of the said Act is remained unexplained. On the other hand, the externment order under challenge passed by the authority normally refers that the fact of recording the statements of two

secret witnesses on 22.9.2001 has been considered and the same is made one of the foundation for passing order of externment. There is also an element of vagueness in the notice to show cause. So, it is rightly argued that the observations made in the case of Ashwin Chandulal Jaiswal vs. Deputy Commissioner of Police Vadodara and Anr., reported in 1990(1) GLH p. 314 would be applicable to the facts of this case. This is a case wherein it can be held that the externee is deprived of reasonable opportunity of tendering explanation as the notice to show cause is silent about the above mentioned facts of the committal of criminal wrong qua two individuals whose statements were recorded on 22.9.2001. The allegations made in the order under challenge has one another implication so far as the externment order is considered. It implies that erroneous matter has been considered which were not subject matter of notice to show cause. Without going into the other grounds of challenge the order of externment can be quashed solely on this ground only. The ratio of the decision in the case of Shanker Bechar Kahar vs. State of Gujarat & Ors., reported in 1990(2) GLH (UJ) p. 26 also helps the present petitioner.

As the order of externment is found bad, its confirmation also cannot stand in the eye of law. It was possible for the appellate authority to consider this material aspect brought to its notice, but it seems that the authority has failed in exercising a quasi judicial powers. So, the order confirming the order of externment also deserves to be quashed and set aside.

This petition is allowed. The impugned orders of externment dated 27.3.2002 passed by the Sub Divisional Magistrate, Gandhinagar and confirmed by the Deputy Secretary, Home Department vide order dated 12.9.2002 are quashed and set aside. Rule is made absolute. DS Permitted.

(C.K. BUCH, J.)

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